

**JAN 17 2006****CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT****UNITED STATES OF AMERICA,****Plaintiff - Appellee.****v.****JOSE LUIS BUENROSTRO,****Defendant - Appellant,****No. 04-16570****D.C. Nos.****CR-95-00504-WBS/PAN****CV-99-1852-WBS/PAN****MEMORANDUM\***

**Appeal from the United States District Court  
for the Eastern District of California  
William B. Shubb, District Judge, Presiding**

**Submitted January 9, 2006\*\***

**Before: HUG, O'SCANNLAIN, and SILVERMAN, Circuit Judges.**

Federal prisoner Jose Luis Buenrostro appeals from the district court's denial of his 28 U.S.C. § 2255 motion challenging his jury-trial conviction for conspiracy to manufacture methamphetamine, in violation of 21 U.S.C. §§ 841,

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

846. We have jurisdiction under 28 U.S.C. § 1291 and 28 U.S.C. § 2253(a), and we affirm.

Buenrostro contends that the district court erred in determining that *Apprendi v. New Jersey*, 530 U.S. 466 (2000), does not apply retroactively to his case. Although he recognizes this court’s ruling in *United States v. Sanchez-Cervantes*, 282 F.3d 662 (9th Cir. 2002) (holding that *Apprendi* is not retroactive on collateral review), he contends that intervening Supreme Court authority has superseded *Sanchez-Cervantes*. This court, however, has rejected this exact contention in *Cooper-Smith v. Palmateer*, 397 F.3d 1236, 1245-46 (9th Cir. 2005). We therefore affirm the district court’s order.

We decline to expand the scope of Buenrostro’s certificate of appealability to include Buenrostro’s remaining claims. *See* 9th Cir. R. 22-1(e); *see also Pham v. Terhune*, 400 F.3d 740, 742 (9th Cir. 2005) (per curiam) (explaining that an appellant requesting an expansion of a COA must make “a substantial showing of the denial of a constitutional right” (internal citation and quotation marks omitted)).

**AFFIRMED.**